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THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation, and maintenance of corporations, is to deal with members of the bar, exclusively.

ANOTHER ANNIVERSARY

We are thirty-seven years old. The actual date is December 4, 1929, as we filed our original charter on December 4, 1892. During the current year we opened an office in Cincinnati and thus we now have twenty-one offices or agencies all manned by our own people. Our present executive officers have been with the company since the first few years of its organization. In 1911 (nineteen years ago), Mr. K. K. McLaren was elected president (he had been treasurer) and Mr. Horace S. Gould became secretary (he had been assistant-secretary), which positions they now occupy, Mr. Gould being a vice-president also. In the same year Mr. Raymond Newman became general manager in charge of agencies (he had been in the Chicago office) and Mr. B. Stafford Mantz was named treasurer (he had been assistant-treasurer). Mr. Mantz continues to be treasurer, and both men are vice-presidents. Several employees of to-day, numbering over 600, came to work for us on the day we opened our doors and have been with us continuously since then. We were at 37 Wall Street twenty-four years; we have been at 120 Broadway (just around the corner) for over four years. We were forced to move because of the lack of available space at the old address to meet the necessities of our expanding business. An atmosphere of stability pervades The Corporation Trust Company organization.

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve the Journal in a permanent file, a special ring binder will be furnished at cost ($2) and thereafter, before mailing, each copy will be punched to fit the binder.

Contents for December

Business Corporations as Lenders of Capital

In the course of a most interesting article by J. Edward Meeker, Economist of the New York Stock Exchange, entitled "Modern Tendencies in Financing Business Corporations" appearing in the September, 1929, issue of *Corporate Practice Review* (New York), the author says: "Meanwhile a third development in American corporate practice has likewise begun to attract considerable attention—the appearance of our stock corporations as consistent lenders of capital. Investment trusts have particularly acquired significance in this regard, but in many cases purely industrial corporations have likewise become lenders on a tremendous scale. Here again is a new trend in American finance which is already occasioning not only conjecture but also controversy. It may be, of course, that the new conception of a business corporation as a creditor and lending institution will prove only a temporary phase in American business development. It can, of course disappear in case business prosperity dwindles and our business corporations find it more and more necessary to employ their surplus funds in their own businesses. Furthermore, the large surplus funds now held by American business companies can of course be distributed as dividends to the shareholders, particularly if generally lower surtax provisions in our Federal income tax should render such a step desirable to large holders of shares. It may be also that our business companies who possess these large liquid accumulations of surplus funds, may come to place them in new fixed assets or in new security investments, whether these latter are or are not related to their essential business." That the stated tendency exists there can be no question; we believe, however, that the character of the funds availed of as intimated, at least, in the extracted quotation above has been misconceived. We do not believe that many "purely industrial corporations" are withholding from their stockholders current earnings in excess of reasonable additions to reserves in pursuance of a safe and sound business policy honestly conceived and carried out in the light of past experience and with present and future trade conditions as closely viewed, estimated, and foreseen as is possible, and are lending such excess, all for the purpose of relieving the stockholders of the Federal income tax burdens that would fall on them were such available funds distributed in dividends. We have no quarrel with the statement that "our business companies who possess these large liquid accumulations of surplus funds may come to place them in new fixed assets"—if so, well and good, but to the contrary with the implied suggestion that as an alternative to loaning surplus funds in excess of reserve requirements in order to lessen income super taxes on stockholders such funds "may come" to be placed in "new security investments, whether these latter are or are not related to their essential business." We believe that the source of the fund availed of for loans, is the necessary legitimate reserves.

Domestic Corporations

California.

Corporation during period suspended for failure to pay license tax may not issue stock. Action here is against the directors of a corporation on account of an alleged loan made to the corporation at a time the latter was under suspension for failure to pay its license tax, the fact of such suspension being unknown to the plaintiffs. By answer it was averred, and so found, that the amount involved was paid to the corporation on account of a subscription for stock to be issued and issued pursuant to permission granted by the Commissioner of Corporations after the order of suspension became effective. The court below found for the defendants. The District Court of Appeal, First District, Division 1, reverses, and directs refund, holding that as the statute providing for suspension prohibits the exercise of any corporate powers, except defense of actions brought against it, and declares void all contracts made, during the period of suspension, no valid contract of subscription ever came into existence; that the Commissioner of Corporations exceeded his authority in issuing the permit; that the issued stock certificates are void and without value; and also, that the fact that the corporation created debts after the transaction here involved is no ground for denying relief to plaintiffs (on the theory that it would be inequitable to allow recovery) since the corporation was without power to create a valid obligation. Silvey et al., vs. Fink et al., 279 P. 202. James M. Thomas, of San Francisco, for appellants. Philip C. Boardman, Louis P. Dunkley, and John R. Tyrrell, all of San Francisco, for respondents.

Right of corporation suspended for failure to pay license tax to use of its original name on revival. In this action, into the merits of which we need not go, it was contended that the plaintiff California corporation was incapacitated from suing since though revived under its original name after having been suspended because of failure to pay license tax such attempted revivor was void as during the period of suspension another California corporation with the identic name had been organized. Under the law as it was some years prior to the date of the instant suspension (1921) a revivor certificate would issue under such conditions "only upon the adoption by such corporation seeking revivor of a new name." At the time of the suspension here, however, there was no such specific statutory provision the state controller under the then law (1917 Act) being empowered to issue the certificate on payment of taxes and penalties. The California District Court of Appeal, Second District, Division 1, in affirming the judgment below for the corporation says: "Accordingly, we conclude that a corporation whose rights, powers, and privileges have been suspended for nonpayment of taxes subsequent to the date on which Chapter 215, Statutes of 1917, became effective, may not be deprived of the use of its corporate name through the adoption of a similar name by another corporation organized in this state during the period of such suspension.

In other words * * * it is entitled to a certificate of revivor from the state controller" if the provisions of the statute are complied with. Southern Land Co. vs. McKenna et al., 280 P. 144. Catherine A. McKenna and J. Irving McKenna, both of Los Angeles, for appellants. Emmet H. Wilson and Randall J. Hood, both of Los Angeles, for respondent.

Delaware.

Extent of power of corporation to adopt charter amendments affecting rights of first preferred stockholders which will be binding on a dissenting minority thereof. Action is by a dissenting holder of first preferred stock to restrain the respondent Delaware corporation from carrying out a plan of reorganization proposed by an independently appointed committee, approved by the directors, and favorably voted by approximately 82 per cent of the first preferred and the (non par) common stock, respectively, and by all of the second preferred. The charter provides for 7 per cent cumulative dividends on the $100 first preferred; redemption on 60 days notice at $110; the right to elect two directors; the exclusive voting control in event dividends are in arrears 1½ years or if annual sinking fund payment of $20,000 to a trust company in trust for annual redemption of first preferred be not made. Without written consent of 75 per cent of outstanding first preferred stock or 75 per cent by vote of such stock at a meeting of the holders called for the purpose no change in voting power of any class of stock shall be made and no stock shall be created in any respect prior to or having parity with the first preferred stock. No dividends have been paid on the first preferred stock. The sinking fund payments have been made year by year. No creditors' rights are involved. The corporation has a large cash surplus but not sufficient to satisfy deferred dividend requirements on the first preferred (and there is nothing, of course, with which to pay accrued cumulative dividends on the second preferred). The reorganization plan calls for two new classes of prior preferred stock, the issuance of a large additional amount of non par common, exchange privilege to the old first preferred (one share for one share each of the two new classes of preferred and ½ share of common), and right to subscribe for additional ½ share of common at $20, the first preferred stockholders to waive all rights to accrued and unpaid dividends. (The holders of all the second preferred stock agree to exchange such stock for the additional common, one share for two, waiving all accrued dividend rights.) Dividends on old preferred are to be no longer cumulative, and such stock is to have no voting powers (except to elect two directors); the annual $20,000 sinking fund payments are to be discontinued; remaining first preferred stockholders (as well as all other stockholders) denied preemption right to subscribe to any new stock or security issues. The United States District Court, District of Rhode Island, stating that the so-called right of pre-emption is not, except within narrow and defined limits, an absolute rule of law," says that it will not decide whether or not the proposed amendment in regard thereto is legal, but, as there is

no immediate intention to issue more first preferred stock the right to subscribe to which would be the most that could be claimed by complainant, it will deny his prayer in respect thereto. The court holds that in view of the statutory provisions in force at the time of incorporation (1920) and of the original charter provisions (it being unnecessary to consider subsequent statutory amendments) no valid objection may be made to any of the proposed changes (except the elimination of the sinking fund) in the preference rights adhering to the first preferred stock (the right to any dissenting and non-complying first preferred stockholder being preserved to receive from, and to the extent of, the past accumulated surplus his proportionate share thereof as accrued and unpaid cumulative dividends). As to the elimination of the sinking fund provision the court holds this to be illegal under the law as it stood in 1920 since the original charter provision created a contractual obligation, and that the right to eliminate is not saved by the 1920 statutory provision that "this chapter and all amendments thereof shall be a part of the charter" coupled with the subsequent legislation authorizing charter amendment to change any "other special rights of the shares" since a state is without power, under the Federal Constitution, to reserve by legislation the right to authorize one of its corporations to so amend its charter as to impair the obligation of a valid contract entered into by the corporation with third parties (its shareholders). The opinion is long and full of meat. Yoakam vs. Providence Biltmore Hotel Co. et al., 34 F. (2d) 533. Herbert M. Sherwood and Sidney Clifford, both of Providence, R. I., for complainant. Edward P. Jastram, Elliot G. Parkhurst, John S. Dole, and Edwards & Angell, all of Providence, R. I., for respondents.

Indemnity bond to procure issuance of new stock certificate for lost certificate. A by-law of the corporation here involved provides that in the event of "any person claiming a certificate of stock to be lost or destroyed" on the making of affidavit to that effect and the giving of an indemnity bond in double the value of the lost shares a new certificate may be issued to such person. A stock dividend was declared. All the necessary certificates were filled in, signed, and sealed. It was the custom to deliver by hand (rather than by mail) all certificates issued by the corporation. When the time came to deliver to the complainant his stock dividend certificate it could not be found. No delivery has ever been made to him. On his demand for his new certificate it was refused unless he complied with the by-law provision relating to lost certificates. This he declined to do and brought this action to compel issuance. The Court of Chancery of Delaware though recognizing, of course, that stock may be outstanding in the absence of a certificate evidencing the fact, says that it would be against reason to say that a certificate had been issued if it has never been delivered into the possession of the stockholder or of some person as agent for him, and furthermore that as in the instant case the stockholder did not lose the certificate and has made no claim that it is lost or destroyed the by-law has no force or application. "He should not be required to indemnify the defendant against its own carelessness." Decree for

complainant. Smith vs. Universal Service Motors Co., 147 A. 247. Caleb S. Layton, of Wilmington, for complainant. Charles F. Richards, of Wilmington, for defendant.

Federal.

Right of a corporation to foster and maintain competition among its own products. A preliminary injunction was granted the plaintiff-defendant restraining the defendant from the use of certain cartons and advertising matter. On the trial the bill was dismissed on the theory, apparently, that the plaintiff came with unclean hands, in that, "so the court seemed to conclude," it was selling the same razor blade at differing prices "under a simulating competition in advertising" as "Gem", "Ever Ready", and "Star", blades formerly made by independent corporations which corporations have been acquired by the plaintiff but are continued as separate corporations for the merchandising of their respective razors and blades, and in that it worked a fraud on the public. The United States Circuit Court of Appeals, Third Circuit, after stating that the testimony is extremely meagre but that the record shows a difference in cost of the blades which would appear to justify a difference in selling price, reverses and reinstates the bill, and says: "* * * each selling agency separately advertises its frames and blades, and not unnaturally each extols the merits of its particular razor and blade. Because each may state that it has the best razor and the best blade is not a fraud on the public, as the plaintiff may legitimately foster and maintain competition among its products. The court is not the keeper of the public conscience, and it would be going very far to hold that, because a complainant did not in some manner measure up to the court's ideas of ethical fairness, the fact is sufficient to bar it from all redress in a court of equity." American Safety Razor Corporation vs. International Safety Razor Corporation et al., 34 F. (2d) 445. Milton Dammann, of New York City (Charles Evans Hughes, of New York, of counsel), for appellant. Davies, Auerbach & Cornell, of New York (Martin A. Schenck & Charles E. Hotchkiss, both of New York), for appellees.

Georgia.

Extent to which one dealing with corporation as such is estopped to deny its corporate existence. Action is by the ultimate assignee of certain choses in action against the obligor. Though not specifically pleaded evidence was admitted to show that the charter of the original assignor corporation had expired at the time it executed the assignment and so that the assignment was invalid. The Court of Appeals of Georgia, Division No. 2, affirms the judgment below for the defendant, and says: "The rule which estops a person who has dealt with a corporation from denying its corporate existence has reference only to a denial that when he dealt with the alleged corporation it was a corporation, and has no reference to his denial of its corporate existence at a later time. The fact that the chose in action sued on arose out of

a contract which the defendant had with the corporation, purporting to be the assignor of the chose in action, does not estop the defendant from asserting that at a later date the charter of the corporation expired, and that the corporation at that time could not execute a valid and legal assignment of the chose in action." Georgia Fertilizer Co. vs. Foster, 149 S. E. 812. Branch & Snow, of Quitman, for plaintiff in error. Franklin & Langdale and H. C. Eberhardt, all of Valdosta, for defendant in error.

Mexico.

Claim by former subsidiary against former parent corporation on open book account covering inter-company transactions disallowed. A United States corporation not being permitted under the Mexican law to own or operate oil-bearing lands within a certain distance of the coast caused subsidiary Mexican corporations to be formed of which it owned all of the share stock. These subsidiaries were staffed with Mexican officers who however had no voice in their management, decided nothing, and were not even consulted, the business of the subsidiaries being conducted by the officers of the parent. The subsidiaries maintained separate books of account, in Spanish, which showed apparent actual sales of oil by the subsidiaries to the parent and apparent payments on account by the latter to the former. In an action against the United States corporation in which receivers for the corporation were appointed one of the Mexican corporations filed a claim against the receivers for an amount due it on account of oil sold, ostensibly, to the defendant for which payment had not been made. The stock of the Mexican corporation had been pledged under a mortgage of the parent company and had been sold under foreclosure and so the former subsidiary was such no more being then in new third-party hands. The United States Circuit Court of Appeals, Second Circuit, affirms the decree below disallowing the claim saying, in effect, that the so-called oil sales were not such in fact, that the records were a sham, being made "formally to conform with, and, if one chooses, to evade, the Mexican law" and that: "Here we must raise an obligation where none would otherwise exist, because by hypothesis both [parties] were concerned in a fraud upon a third. As compensation, this would be fruitless; as punishment, it would be capricious; as law, it would create an obligation ex turpi causa." New York Trust Co. vs. Island Oil and Transport Corporation; Ex parte Compania Petrolera Capuchinas, 34 F. (2d) 655. William M. Chadbourne, of New York City (Clinton De Witt Van Siclen, of New York City, on the brief), for appellant. Carl J. Austrian, of New York City (Saul J. Lance, of New York City, on the brief), for appellees.

Minnesota.

Liability of corporation for debts incurred during period it was acting as a corporation but was not such in fact. The members of a Minnesota partnership attempted to form a South Dakota corporation to take over the business, assets, and liabilities of the partnership.

Articles of incorporation were drawn up and signed but never filed. It was presumed by those interested that a corporation had been formed and the subsequent business was carried on in every respect in corporate form, under the corporate name. When, two or three years later, the mistake was discovered the articles were filed and incorporation effected. All acts done between supposed and actual incorporation were attempted to be made the acts of the corporation by duly adopted resolution of the directors. The corporation qualified to do business in Minnesota. Bankruptcy ensued. Action is in the United States District Court, District of Minnesota, First Division, by creditors who became such during the period of supposed incorporation to review orders of the referee disallowing their claims. The referee determined that prior to the filing of the articles not even a de facto corporation existed and so disallowed the claims as not being liabilities of the corporation. The court says that "the referee was no doubt correct in his conclusion that there was no corporation de facto" but holds that in view of all the circumstances and conditions the claims should have been allowed as liabilities of the finally perfected corporation even though there may have been insolvency, as claimed, at the time of the filing of the articles. In re Johnson-Hart Co., 34 F. (2d) 183. Cox, Weeks & Kuhlman, of Minneapolis, for petitioners. John A. Pearson and R. F. Schroeder, both of St. Paul, for trustee.

New Jersey.

Sale of all assets of a corporation to be followed by dissolution restrained by dissenting minority stockholders. The corporation here involved is engaged in the business of investing in securities of various kinds, particularly those of banks. Adverse legislation rendered impossible further acquisition of such bank securities. The corporation had been prosperous and it was desired and desirable that the business be continued and that there be opportunity for expansion, legally. To accomplish this it was planned (by resolution by vote of a large majority of the stock) to sell all of the assets to a certain "City National Bank," distribute the proceeds of the sale among the stockholders, dissolve, form the "City National Company, Inc." the share stock of which was to be offered to the shareholders of the bank, and continue the former business. All but five of the shareholders of the involved company were shareholders of the bank. These five shareholders being given no opportunity to subscribe to the shares of the new company would be "frozen out." Action is by one of the five (a holder of a few shares only) to restrain the carrying out of the plan. The Court of Chancery grants the injunction "until the further order of the court." Other allegedly similar cases, decided otherwise, are distinguished. Here the company is successful; in practical effect it plans to continue the successful business but to the exclusion of the unfortunately placed five from further participation therein. True, the five receive in money an amount assumed until final hearing to be equal to the value of their shares. But they are shorn of their investment—a property right. The court says that the proposed plan to solve the corporation's problem

is illegal. "There is much to be said for our custom of majority rule, but it should not permit a ruthless or thoughtless majority to ride roughshod over the property rights of even a single individual." Meyerhoff vs. Bankers' Securities, Inc., et al., 147 A. 105. Rex B. Altschuler, of Hackensack (Harry Lane, of Jersey City, of counsel), for complainant. Hart & Vanderwart and Herman Vanderwart, all of Hackensack, for defendants.

New York.

Corporate name may include the word "securities". Doubt having arisen because of the enactment of Chapters 650 and 651, New York Laws of 1929, as to whether or not the word "securities" could be used lawfully as part of the name of a corporation organized under the General Corporation Law the question was placed before the Attorney General of New York by the Secretary of State. The Attorney General under date of October 22, 1929, advised the Secretary of State that until further action of the legislature certificates of business corporations ontaining names with the word "securities" should be accepted.

Ohio.

Action by receiver of insolvent corporation for unpaid stock subscription. Defendant subscribed for certain shares of stock of a corporation; after having paid a part of the subscription price he ceased to make payments. The corporation having become insolvent receivers were appointed. Action is by the receivers to recover the unpaid subscription. The court below sustained the demurrer to the complaint as not stating a cause of action because of failure to allege the necessity for the collection of the money for the purpose of paying debts and that without such money there would not be sufficient money to pay the debts. The Court of Appeals for Cuyahoga County, Ohio, reverses and remands. The court says: "Stuart (the subscriber) entered into a contract which he has not complied with; and the receivers of the corporation can recover upon it without showing that it is necessary to collect it in order to pay the debts of the corporation, for, as already stated, it would only tend to put the stockholders on a parity, and if there is any distribution of the assets of the corporation among the stockholders upon its final dissolution, after its debts are paid, the stockholders who subscribed and renigged would be in the same position as the stockholders who subscribed and paid up." Bracken et al., Receivers, vs. Stuart, 1929 Ohio Law Bulletin & Reporter, page 167; 32 Ohio App. 399; 168 N. E. 149. Francis J. Cook, of Cleveland, for plaintiff in error. Hyre & Hyre, of Cleveland, for defendant in error.

Vote necessary for a valid election of directors. The Ohio statutes provide that a corporation shall adopt a "code of regulations" (by-laws) not inconsistent with the constitution and the laws of the state and that such regulations may include provisions relative to what constitutes a quorum for stockholders meetings. Here it was provided by regulations that "three-fifths of all the stockholders shall

constitute a quorum" at the annual meeting. At the meeting here in question three-fifths of the stockholders, per capita, were present either in person or by proxy. Their combined share holdings aggregated more than half of the issued and outstanding voting stock but less than three-fifths thereof. They elected directors; this action, in quo-warranto, questions the validity of the election on the contention that "three-fifths of all the stockholders" means three-fifths of all the stockholders in interest, that is that three-fifths of the voting stock must be represented. The Ohio Supreme Court, affirming the judgment below, decides against this contention and holds that the word stockholders in the regulation must be given its usual and customary meaning which is "persons" owning stock. Schwab vs. Price, et. al., 167 N. E. 366. Nelson Schwab, Prosecuting Attorney, J. Sagmeister, and Goebel, Dock & Goebel, all of Cincinnati, for plaintiff in error. Dolle, O'Donnell & Cash, of Cincinnati, for defendants in error.

Texas.

Action by the trustee against stockholders of a bankrupt corporation for unpaid stock subscriptions. A Texas corporation was organized by the two defendants here and three other men at the request of a Delaware corporation, to serve as a subsidiary of, or holding company for, the latter. The Texas statutes provide that before a charter may be filed with the secretary of state the full amount of the authorized capital stock must be subscribed and at least 50 per cent thereof paid for in cash or the equivalent in property or labor done. There was a secret agreement between the five subscribers and the Delaware corporation that the former would not be called on to pay their subscriptions—that the Delaware company would take care of that matter. The subscribers never did pay anything and never received any stock all of which was issued direct to the Delaware corporation which exercised complete control of the Texas corporation. The Delaware corporation is alleged to have made full payment by the extension of certain credits and the assignment of certain leases to the Texas company but the evidence fails to show this to be true. Action is by the trustee in bankruptcy of the Texas company for the full amount of the subscriptions of the two defendant-subscribers. The other three subscribers are resident without the state and, so it is stated, have no property within the state. The Court of Civil Appeals of Texas (Fort Worth), reversing the court below, holds that the trustee may recover the full amount of the respective subscriptions even though the aggregate thereof be more than sufficient to pay creditors (actually it would not suffice therefor), and even though the other three subscribers were not made parties defendant or defendants in like separate actions in Texas courts (for lack of jurisdiction in such courts). It was stated that suits against the other three subscribers were to be brought in the courts of their state of residence. Stevens vs. Davenport and another, 19 S. W. (2d) 445. Bullington, Boone, Humphrey & King, of Wichita Falls, for appellant. Smoot & Smoot and Kay-Akin & Smedley, all of Wichita Falls, for appellees.

West Virginia.

Equitable relief afforded preferred stockholders. Action is for the appointment of a receiver and other appropriate relief by the holders (residents of Pennsylvania) of a large majority of the preferred stock (preferred as to 6 per cent cumulative dividends, etc.; had voting power) of a West Virginia corporation. As a much larger number of common shares were outstanding in the hands of others the preferred stock was in the minority. The West Virginia corporation was a holding company, merely, its assets consisting of all the stock of a Pennsylvania operating company. The directorates and officers of the two corporations were the same. There was a vast amount of deferred cumulative dividends on the preferred stock. The Pennsylvania company was successful and had a large accumulation of surplus and undivided profits. The trial court (a Federal District Court) finding that the preferred stockholders were "entitled to some real consideration and relief herein," suggested in a memorandum decision that arrangements be made by the two companies for the payment of a $20 per share dividend on the preferred stock and stated that if reasonable steps were not taken within 30 days to do so a decree would be entered appointing a receiver to do the things necessary to collect the sums needed to make the payments. The payments not being made decree was entered for the appointment of a receiver to take over the assets of the West Virginia corporation and to prosecute such suits and to take such steps as proved necessary to effectuate the purposes of the memorandum decision and to cause to be paid such dividends on the preferred stock as were properly payable. It was urged that the Pennsylvania company was an indispensable party defendant to the action. To have so held would have deprived the Federal courts of jurisdiction because of a lack of diversity of citizenship. The United States Circuit Court of Appeals, Fourth Circuit, modifies the decree, holding that while the appointment of receivers with power to go into the Pennsylvania courts to prosecute suits to the end that plaintiffs' interests be protected was proper and that in an action for that purpose the Pennsylvania company was not an indispensable party defendant, there was error in attempting to provide for the payment of any specific dividends and in giving the receivers power to take over the assets of the West Virginia company. Tower Hill Connellsville Coke Co. of West Virginia vs. Piedmont Cole Co. et al., 33 F. (2d) 703. Thomas Watson, of Pittsburgh, Pa., and E. W. Knight, of Charleston, W. Va. (Lon H. Kelly, of Charleston, and M. W. Acheson, Jr., and Robert M. Steffler, both of Pittsburgh, Pa., on the brief), for appellant and cross-appellees and E. C. Higbee, of Uniontown, Pa. Wm. M. Robinson and Edwin W. Smith, both of Pittsburgh, Pa. (Arthur S. Dayton, of Charleston, on the brief), for appellees and cross-appellants.

Foreign Corporations

Arkansas.

Creation of domestic corporation to overcome inability of foreign corporation to condemn private property. Though this is

not a "business corporation" case it nevertheless warrants a few words. A Delaware gas and electric company, qualified to do business in Arkansas was erecting an electricity transmission line from a point in Louisiana to a point in Arkansas. Reaching a certain orchard in Arkansas it found itself unable to make arrangements to enter and erect its poles and string its wires. It then filed suit by which it sought to condemn a right of way across the orchard, and procured an order authorizing it to enter and proceed. On the same day a petition for revocation of the order was filed on the ground that the gas and electric company as a foreign corporation could not condemn since the state constitution, referring to foreign corporations, reads: "nor shall they have power to condemn or appropriate private property." A stay was granted the same day. On the day following a domestic corporation was organized "to generate and transmit electricity for public use," certain transmission line properties in Arkansas of the Delaware company being paid in for the stock of the new domestic company. The Arkansas company then leased its property holdings to the Delaware company and made application for an order of condemnation of a right of way across the orchard. This was granted and the Delaware company caused its suit to be dismissed. The Supreme Court of Arkansas sustains the decree below saying that there was no fraud and that the methods employed were regular and justifiable. Patterson Orchard Co. vs. South-West Arkansas Utilities Corporation, 18 S. W. (2d) 1028. Lake, Lake & Carlton, of De Queen, for appellant. Abe Collins, of De Queen, and Arnold & Arnold, of Texarkana, for appellee.

New York.

Installation in New York of pipe organs made and shipped from without the state is a part of interstate commerce. This is an action by the plaintiff companies against a labor union and persons associated with it to restrain them from interfering with plaintiffs' business, into the merits of which we need not go. The business involved consists of the sale and installation in New York of pipe organs the component parts of which are manufactured in another state and shipped from that state as separate parts. It became necessary to determine before going to the merits, Federal anti-trust laws being involved, whether or not the business referred to was intrastate or interstate. The United States District Court, Southern District of New York, holding that the business is interstate says: "The agreement of the organ manufacturer to install is not only relevant and appropriate to the interstate sale but is essential if an organ, as distinguished from its parts, may be sold at all. The thing sold is a musical instrument, complete in itself." The unassembled component parts are not the subject of the sale; the sale is not complete until these have been installed with proper relation to one another and intricate electrical connections made and adjusted "so that the whole will function as a delicately tuned musical instrument." The court says that this case is governed and controlled by the York Mfg. Co. case, 247 U. S. 21 (installation of an intricate ice making machine held not to be "doing business" —Texas). The Aeolian Co. et al. vs. Jacob Fischer, et al., United

States Daily, October 30, 1929, page 6. Pavey & Higgins (James T. Higgins, of counsel), for plaintiffs. James E. Smith, for certain of the defendants.

Service of process on foreign corporation declared invalid. The Canadian corporation here involved had in New York, prior to August 3, 1927, a resident agent for soliciting and closing orders. He conducted business in the corporation's name and consummated contracts for it in New York. This was "doing business" in New York. On August 3, 1927, the resident agent resigned and thereafter traveling salesmen only, sent from the company's Toronto office, were employed in soliciting orders in New York which orders in all cases were forwarded to the home office for acceptance or rejection. The volume of business remained the same. The United States District Court, Southern District of New York, holds that these later activities of the corporation in New York were no more than mere solicitation and did not constitute doing business in the state and that the service of process on one of the company's directors in New York after the stated date was invalid, saying "The question is no longer open to examination in this court. The present state of the law is authoritatively declared in Davega, Inc., vs. Lincoln Furniture Co., 29 F. (2d) 164" (C. C. of A., 2d. C.) (THE CORPORATION JOURNAL for April, 1929, page 398). The action is by the United States to enjoin alleged violations of the anti-trust laws. The court confirms the master's conclusion that the complaint should not be dismissed though the service of process was invalid since "it does not follow that the suit may not be maintained here, if service can be made in any district where the defendant may be found." United States vs. Asbestos Corporation, Limited, et al., 34 F. (2d) 182. Charles H. Tuttle, U. S. Atty., of New York (William J. Donovan, Asst. to the Atty. Gen., and Bethuel M. Webster, Jr., Sp. Asst. to the Atty. Gen., of counsel), for the United States. Crawford & Harris, of New York City, for defendant Asbestos Corporation, Limited.

Oregon.

Foreign corporation desiring to "sell" its own stock in Oregon need not qualify under the foreign corporation law. So holds Attorney General van Winkle of Oregon in a written opinion as reported in the United States Daily, issue of October 23, 1929, page 15. It is stated in the opinion that by weight of authority the mere disposal by a corporation of its own stock or securities within a state does not constitute "doing business" in that state in the sense contemplated by the foreign corporation qualification law, and that compliance with the provisions of the Oregon blue sky act is all that should be required of a foreign corporation in such a case. It is pointed out that the blue sky law itself provides that when making application for a permit to "sell" its stock or securities in Oregon a foreign corporation must agree to be suable in the state courts on any cause of action growing out of a violation of any of the provisions of such law.

Taxation

Arkansas.

Corporation income tax held not unconstitutional. The Arkansas income tax law (Acts of 1929, No. 118), a brief statement in regard to which in so far as applicable to domestic and foreign corporations appeared in THE CORPORATION JOURNAL for May, 1929, page 425, has been declared by the Arkansas Supreme Court (affirming the decree below) to be not violative of the Federal and state constitutions to the extent of the specific objections offered in the case before it. The action was brought by taxpayers to enjoin the state officials from enforcing the act on the ground of unconstitutionality. The grounds advanced were broad in character—general lack of uniformity, inequality and discrimination (because of differing rates and exemptions as between individuals and corporations), denial of equal protection of the law (because of progressive rates in the case of individuals), retroactivity, etc.—and included allegations of an insufficient vote on passage by the legislature and of changes made in the text of the emergency declaration after passage but before presentation to the Governor for his approval. Stanley vs. Gates, 19 S. W. (2d) 1000. Horace Chamberlin, of Little Rock, for appellants. Hal. L. Norwood, Atty. Gen., David A. Gates and John D. Carter, both of Little Rock, and Williamson & Williamson, of Monticello, for appellees. There were many amici curiae.

Idaho.

License tax on retail and wholesale dealers in oleomargarine held valid. The annual state license fees imposed by Chapter 70, Laws of 1929, on retail and wholesale dealers in oleomargarine or other substitutes for dairy products made from milk or cream are $50 and $200, respectively, for each place of business where such products are sold or held in possession with intent to sell. It was found that no oleomargarine is made in Idaho, that all of the large quantities sold within the state is first imported from other states, and that the raising of cows for their milk and the making of butter is a basic industry of Idaho. No license fees are imposed for the privilege of selling butter. The taxing act was assailed as unconstitutional because of inequality, discrimination, denied of equal protection of the law, and interference with interstate commerce. The United States District Court, District of Idaho, S. D., finds the act valid: there is no relationship between the cow and the butter and the manufacturing plant and the oleomargarine and a license tax may be imposed for the privilege of selling one of the unrelated products though no tax is imposed for the privilege of selling the other; all retail and wholesale dealers in oleomargarine are impartially taxed in their respective classes; the tax is imposed for the privilege of selling the imported oleomargarine within the state after it has come to rest therein; it does not follow that because one effect of a license tax is to afford protection to a home industry its

imposition was purely arbitrary. The Best Foods, Inc., vs. Welch. Com. of Agriculture, et al., and three other cases, 34 F. (2d) 682. Hawley & Hawley, of Boise, for complainants. W. D. Gillis, Atty. Gen., and Leon M. Fisk, Asst. Atty. Gen., for defendants.

Kansas.

Basis for capital stock tax not to include holdings of stock of other taxable corporations. The Supreme Court of Kansas, affirming the court below, in interpreting Kansas R. S. § 79-310 which provides, inter alia, that no "person" shall be required to include in the list of personal property the capital stock of a corporation which is required to be listed by such company and that every corporation shall list "the full amount of stock paid in and remaining as capital stock, at its true value, and such stock shall be taxed as other personal property," holds that though the section specifies investments in real and personal property given to the assessors for taxation only as deductible items, share stock of other taxable corporations should be deducted nevertheless from the listed value of the capital stock of the holding corporation for purposes of assessment and taxation. Crosby Brothers Mercantile Co. vs. Board of County Commissioners, County of Shawnee, et al., 280 P. 786. Eugene S. Quinton and Paul H. Heinz, both of Topeka, for the appellants. Bennett R. Wheeler, S. M. Brewster, J. L. Hunt and Virgil V. Scholes, all of Topeka, for the appellee.

Louisiana.

Oil severance tax held valid. In the January, 1929, Journal, page 329, it was said: "Act No. 5 of 1928 provides for a severance tax on oil at sliding scale rates per barrel based on the gravity of the oil, the tax rate increasing with bracketed increases in gravity. It was alleged that the gravity classification is wholly arbitrary and grossly discriminatory." The United States District Court for the Eastern District of Louisiana, New Orleans Division, sustained the tax law and denied the interlocutory injunction prayed for to prevent the collection of the tax. Ohio Oil Co. vs. McFarland, 28 F. (2d) 441. On appeal to the United States Supreme Court that court held that as the questions of fact could not be determined satisfactorily from the affidavits presented and as there was danger of irreparable injury to the plaintiff an interlocutory injunction on terms should have been granted pending a hearing on the merits. Ohio Oil Co. vs. Conway (there having been a substitution of defendants-supervisors of accounts), 279 U. S. —, 49 S. Ct. 256. Now the same District Court again sustains the tax, denies the injunction, and dismisses the bill. Ohio Oil Co. vs. Conway, Supervisor of Public Accounts, 34 F. (2d) 47. R. L. Benoit, Thigpen, Herold, Lee & Cousin, Pugh, Grimmet & Boatner, Chas. H. Blish, Blanchard, Goldstein & Walker, Tinsley Gilmer, and J. S. Atkinson, all of Shreveport, for plaintiff. Percy Saint, Atty. Gen. of Louisiana, for defendant.

Delaware Corporations Organized.

545 corporations were organized under the laws of Delaware from October 21 to November 20, as against 606 for the preceding 30-day period, and 546 for the corresponding period of one year ago.

Some Important Matters for December and January

This calendar does not purport to cover general taxes or reports to other than state officials, or those we have been officially advised are not required to be filed. *The State Report and Tax Service* maintained by *The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of report and tax matters requiring attention from time to time, furnishing information regarding forms, practices and rulings.

ALASKA—Annual Corporation Tax due on or before January 1.—Domestic and Foreign Corporations.

ALABAMA—Annual Application Fee for permit to do business due February 1.—Domestic and Foreign Corporations.

CONNECTICUT—Annual Report due on or before February 15.—Domestic and Foreign Corporations.

DELAWARE—Annual Report due on or before first Tuesday in January.—Domestic Corporations.

DISTRICT OF COLUMBIA—Annual Report due between January 1 and January 20.—Domestic Corporations.

GEORGIA—Annual License Tax Report due on or before January 1.—Domestic and Foreign Corporations.

KENTUCKY—Annual Report due on or before February 1.—Domestic and Foreign Corporations.

LOUISIANA—Annual Report due on or before February 1.—Domestic and Foreign Corporations.

MISSOURI—Return of Information at Source due on or before February 1.—Domestic and Foreign Corporations.

NEW YORK—Annual Franchise Tax based on Income of Business Corporations due on or before January 1.—Domestic and Foreign Business Corporations other than realty and holding companies.

Annual Franchise Tax Report, Real Estate and Holding Corporations, due between January 1 and February 15.—Domestic and Foreign Corporations.

OHIO—Report to Industrial Commission due during January.—Domestic and Foreign Corporations.

SOUTH CAROLINA—Annual Statement due on or before January 31.—Foreign Corporations.

UNITED STATES—Fourth Instalment of Income Tax imposed for the calendar year 1928 due on or before December 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

UTAH—Corporation License Tax due between November 15 and and December 15.—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with the various departments of its business The Corporation Trust Company publishes the following supplementary pamphlets and forms, any of which it is always glad to send without charge to readers of The Journal:

Why a Transfer Agent? The question of why corporations, even those of small capitalization or with inactive or closely held stock, are safer when their stock records are in the hands of an experienced transfer agent is answered in this pamphlet by actual incidents from the experiences of different corporations.

Why Corporations Leave Home. This is an informal discussion, from the business man's point of view and in layman's language, of why so many business companies are organized under the laws of Delaware instead of in their home states. While primarily for laymen, lawyers also may find this pamphlet useful when considering the matter of what state to choose for incorporation of a client's business.

Analysis of Delaware Amendments of 1929. In this especially prepared pamphlet the full text of all provisions, both of the corporation law and the franchise tax law, which were changed by the amendments of 1929 is so presented as to show (1) the law as it stood before amendment; (2) matter repealed; (3) new matter. Then, immediately following each section changed, is a short, clear explanation of the reason for and effect of the change.

The New Decedent Estate Law of New York. The full text of the law as completely revised by the legislature of 1929, is given in this pamphlet.

What Constitutes Doing Business. (Revised to July, 1928). A pamphlet containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business."

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation.

Special Reports. When cases are decided that seem to be of some particular interest or significance in connection with the matter of doing business by foreign corporations, The Corporation Trust Company sometimes issues one of these special reports. One on the Southwest Company case is now available.

Transfer Requirements Chart. This supplement to The Stock Transfer Guide and Service shows the classifications into which requests for stock transfer are divided and how the principal requirements for each classification may be determined, either by the transfer agent or the individual desiring transfer made.